



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Commercial Energies, Inc.--Reconsideration

File: B-234651.2

Date: June 13, 1989

DIGEST

Prior dismissal of a protest is affirmed where action taken by the agency (award of the contract to the protester) has rendered the issue academic.

DECISION

Commercial Energies, Inc. (CEI), requests that we reconsider our prior dismissal of its protest as academic. CEI initially protested the Department of the Navy's decision to issue invitation for bids (IFB) No. N62474-88-B-4959, as a total small business set-aside, rather than as a small disadvantaged business (SDB) set-aside, for the supply of natural gas.

We affirm our dismissal.

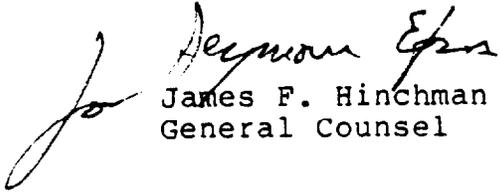
After the protest was filed, the Navy awarded the contract to CEI as the low bidder. While CEI concedes that it is not protesting the Navy's decision to award it the contract, CEI continues to challenge the Navy's decision not to issue the IFB as an SDB set-aside.

The protester does not dispute that award to the firm renders its protest under this solicitation academic. Rather, the protester argues that, by making award to the firm, the Navy will escape review of this issue by our Office since, according to the protester, this is a recurring problem. GEI points out that in a second protest currently pending at our Office, the Navy is asserting that CEI is not an interested party to raise this issue, and therefore, the issue may again not be resolved. This, in itself, does not warrant our review of what is otherwise undisputedly an academic protest since CEI is free to protest any and all future solicitations presenting this

045728/138886

issue. See Green Plant Enterprises, Inc., B-227060.2,
Oct. 16, 1987, 87-2 CPD ¶ 366.

Accordingly, our prior dismissal is affirmed.


James F. Hinchman
General Counsel